

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

FRED ADAMI and JACK F. VARNER, on
behalf of themselves and all
others similarly situated,

Plaintiffs,

v.

CARDO WINDOWS, INC. d/b/a "Castle
'The Window People'" et al.,

Defendants.

HONORABLE JEROME B. SIMANDLE

Civil No. 12-2804 (JBS/JS)

ORDER

This matter came before the Court on Plaintiffs' motion for approval of form of collective action notice [Docket Item 114] and Defendants' cross-motion to "cease and desist from misleading communications" [Docket Item 116]; Richard S. Hannye, Esquire, appearing on behalf of Plaintiffs, Fred Adami and Jack F. Varner; Peter J. Tomasco, Esquire and Michael D. Homans, Esquire appearing on behalf of Defendants, Cardo Windows Inc., Christopher Cardillo, Sr., Christopher Cardillo, Jr., Nicholas Cardillo, Edward Jones, John J. Belmonte, Pat Tricocci, and Nicholas Brucato; the Court having considered the parties' submissions and having heard oral argument on April 11, 2014;

For reasons stated in the Court's oral opinion of April 11, 2014; and for good cause shown;

IT IS this 14th day of **April, 2014** hereby

ORDERED that Defendants' cross-motion to "cease and desist from misleading communications" [Docket Item 116] is **GRANTED IN PART** as follows; and it is further

ORDERED that Plaintiffs' counsel, Richard S. Hannye, Esquire, shall within seven (7) days of today's date in a letter to Defendants verified by Jack Varner identify the recipients (names and addresses) of the letter from Jack Varner dated February 4, 2014 or any similar letter, as well as list the names and addresses of those letters returned as undeliverable; and it is further

ORDERED that Plaintiffs' motion for approval of form of collective action notice [Docket Item 114] is **GRANTED**; and it is further

ORDERED that the Notice of Collective Action will be the document attached to this Order; and it is further

ORDERED that Plaintiffs' counsel shall disseminate this Notice by U.S. mail within seven (7) days hereof (or within 7 days of learning a valid current address of a potential collective action member, but not later than 30 days hereof) to each potential collective action member whom Plaintiffs' counsel in good faith believes satisfies the collective action definition detailed in the Court's Opinion and Order of January 29, 2014; and it is further

ORDERED that Plaintiffs' counsel shall provide recipients of the collective action notice a return envelope with postage paid and

pre-addressed to the Clerk of the U.S. District Court, United States Courthouse - Room 1050, P.O. Box 2797, Camden, NJ 08101; and it is further

ORDERED that the notice date referenced in the collective action notice shall be April 15, 2014; and it is further

ORDERED that Plaintiffs' counsel shall disclose to Defendants the names and addresses of the individuals to whom he mailed the collective action notice attached to this Order within seven (7) days of mailing same; and it is further

ORDERED that counsel shall confer and provide to the Court within 14 days of today's date a proposed consent letter to individuals who have filed unapproved "opt-in" forms on the docket, but who fail to satisfy the collective action definition detailed in the Court's Opinion and Order of January 29, 2014 informing the recipients that their opt-in forms are invalid because they are not within the collective action encompassed by this case; and it is further

ORDERED that individuals who have filed unapproved "opt-in" forms on the docket and who satisfy the collective action definition detailed in the Court's Opinion and Order of January 29, 2014 shall be sent the notice attached to this Order and must file the "Consent to Join" form approved by the Court with the Clerk of Court on or before June 16, 2014; and it is further

ORDERED that the Court will hear oral argument on the parties' cross-motions for summary judgment [Docket Items 87 & 88] on May 14, 2014 in Courtroom 4A at 9:30 a.m.

s/ Jerome B. Simandle
JEROME B. SIMANDLE
Chief U.S. District Judge

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CAMDEN VICINAGE

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Defendants.

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NOTICE OF COLLECTIVE ACTION

DATE: April 15, 2014

FROM: Richard S. Hannye, Esquire
HANNYE LLC
128 West Cottage Avenue
Haddonfield, NJ 08033
(856) 428-1775

TO: Window Installers for Cardo Windows, Inc. d/b/a “Castle ‘The Window People’”

RE: Lawsuit Against Cardo Windows, Inc. d/b/a “Castle ‘The Window People’”
 (“Cardo”) for Alleged Failure to Pay Overtime

1. INTRODUCTION

The purpose of this Notice is to inform you of the existence of a collective action lawsuit in which you may be a member of the Plaintiff Class, to advise you of how your rights may be affected by this suit, and to instruct you on the procedure for participating in this suit if you so desire.

IF YOU WISH TO JOIN THIS LAWSUIT, YOU MUST SIGN AND SUBMIT THE “CONSENT TO JOIN” FORM ATTACHED, AND IT MUST BE FILED WITH THE CLERK OF COURT ON OR BEFORE JUNE 16, 2014. YOU SHOULD DISREGARD ANY PREVIOUS NOTICE YOU RECEIVED ABOUT THIS CASE BECAUSE SUCH NOTICE WAS IMPROPER.

THE COURT WILL NOT CONSIDER ANY FORMS PREVIOUSLY SUBMITTED BECAUSE THESE FORMS WERE NOT APPROVED BY THE COURT.

2. DESCRIPTION OF THE LAWSUIT

This is an action, originally filed on May 10, 2012 by plaintiffs on behalf of themselves and all others similarly situated under the Fair Labor Standards Act (“FLSA”), 29 U.S.C. § 201, *et seq.*, which seeks damages for unpaid overtime as employees of Cardo Windows, Inc. Defendant Cardo denies liability and contests plaintiffs’ allegations.

3. COMPOSITION OF THE PLAINTIFF CLASS

The named plaintiffs seek to sue on behalf of themselves and on behalf of all other individuals who installed windows for Cardo at any time during the three (3) years prior to the date of this notice. The term “individual” includes sole proprietorships and incorporated business entities. Excluded from the Plaintiff Class are all “helpers,” as well as installers who signed mandatory arbitration and/or class action waiver agreements. Helpers are individuals who assisted in the installation of windows for Cardo, but were not paid directly by Cardo for their work.

4. YOUR RIGHT TO PARTICIPATE IN THIS LAWSUIT

If you fit the definition above, you may join in the FLSA claims in this suit (that is, you may “opt in”) provided that you make sure a “Consent to Join” is signed by you and timely filed with the Court. A Consent to Join form is attached together with a pre-addressed, postage paid envelope for return of the Consent to Join form to the Clerk of Court. The Consent to Join form must be received by the Clerk of Court’s office on or before June 16, 2014.

Your eligibility to file a Consent to Join is not affected by any statute of limitations. Even if you file a Consent to Join, however, your continued right to participate in this suit may depend upon a later decision by the District Court that no statute of limitations has run against you. In addition, your continued right to participate may depend upon a later decision that you and the plaintiffs are similarly situated, in accordance with federal law.

5. YOUR RIGHT NOT TO PARTICIPATE IN THIS LAWSUIT

You are not required to participate in this lawsuit. If you choose not to join this lawsuit, you will not be affected by the judgment, favorable or unfavorable. If you do not want to join in this lawsuit or if you intend to bring your own lawsuit, you do not have to do anything in response to this notice. If you do not return the “Consent to Join” form before the June 16, 2014 deadline, you will not be able to join this lawsuit.

6. EFFECT OF JOINING THIS LAWSUIT

If you choose to join this suit, you will be bound by the judgment whether it is favorable or unfavorable. While the suit is proceeding you may be required to provide information about your work, your earnings, and your tax status during the time you worked for Cardo, sit for depositions and testify in court. Among other things, you may be required to prove that you were an “employee” of Cardo Windows, Inc., and that as an employee you worked overtime hours for which you were not properly compensated under federal law. You will not be required to pay

attorneys' fees directly. If the plaintiffs prevail, the attorneys may apply to the Court for an award of counsel fees from Cardo or seek approval of an award of fees as a percentage of any common fund established in this case.

7. RETALIATION FOR FILING A CLAIM IS ILLEGAL

It is unlawful for Cardo to retaliate against any installer who joins in this action. Under federal law, Cardo is prohibited from terminating you or discharging you or in any other manner discriminating against you because you exercised your right to join this lawsuit.

8. YOUR LEGAL REPRESENTATION IF YOU JOIN

If you choose to join this lawsuit, your interest will be represented by the named plaintiffs through their attorneys. You may also choose to retain your own attorney. The following is contact information for plaintiffs' counsel:

Richard S. Hannye, Esquire
HANNYE LLC
128 West Cottage Avenue
Haddonfield, NJ 08033
(856) 428-1775
(856) 428-1919 – telefax
hannye@hannye.pro

9. FURTHER INFORMATION

Further information about this lawsuit can be obtained by contacting plaintiffs' counsel, Richard Hannye, at the above-referenced address.

THIS NOTICE AND ITS CONTENTS HAVE BEEN AUTHORIZED BY THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF NEW JERSEY, BY CHIEF JUDGE JEROME B. SIMANDLE, U.S.D.J. HOWEVER, THE COURT HAS TAKEN NO POSITION REGARDING THE MERITS OF THE PLAINTIFFS' CLAIM OR OF CARDO'S DEFENSES.

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"CONSENT TO JOIN" FORM

**CONSENT TO BECOME PARTY PLAINTIFF IN ACTION
UNDER SECTION 16(b) OF FAIR LABOR STANDARDS ACT
[29 U.S.C. § 216]**

TO: The Clerk of the Court and to all parties and their counsel of record

I am an individual who installed windows for Cardo during the three (3) years prior to the date of the court-authorized notice that accompanied this form. I hereby consent to become a party plaintiff in the above-captioned lawsuit filed against Cardo alleging violations of the Fair Labor Standards Act.

Date: _____

Signature

Print Name

Telephone

Address

Email Address

City

State

Zipcode

NOTE: Mail this form in the enclosed pre-addressed envelope to the Clerk of the U.S. District Court, United States Courthouse – Room 1050, P.O. Box 2797, Camden, NJ 08101, to be delivered on or before June 16, 2014.